Marywood University
Policies and Procedures

Immigration Policy

Policy Statement:

This *Immigration Policy* will serve to facilitate Marywood University's ("Marywood") hiring and retention of foreign nationals requiring sponsorship in order to be lawfully employed in the United States. Marywood University will pay all or a portion of the United States Citizenship and Immigration Services' ("USCIS") petition and application fees as well as legal expenses as set forth herein. Employment with Marywood is fully contingent on Marywood's ability to obtain valid employment authorization on behalf of a potential employee who is a foreign national.

In order for Marywood to commence the immigration process, a foreign national currently present in the United States must present evidence of valid immigration status when accepting Marywood's offer of employment.

Foreign nationals must cooperate fully during the immigration process and must provide Marywood with the necessary documentation to process said process as efficiently as possible. Marywood reserves the right to withdraw an offer of employment should an employee negligently or intentionally delay providing required documentation and/or intentionally provide misleading or inaccurate information to support an application or petition for an immigration benefit.

Nonimmigrant Visa Acquisition (e.g., H-1B | 0-1 |TN)

Marywood will pay the direct fees and legal expenses associated with the standard processing of all nonimmigrant visa acquisition processes. If the use of premium processing is for Marywood's benefit, Marywood will assume the cost of this fee (currently $2,500) as mandated by USCIS regulation and guidance. If the premium processing service is, however, for the benefit of the foreign national, then the foreign national must pay this fee.

Marywood will not cover or pay the expenses associated with the preparation and submission of any applications for derivative family members to maintain status in the United States. Nor will Marywood cover any expenses associated with applying for or obtaining a visa stamp at a United States Embassy or Consular post abroad.

Lawful Permanent Resident Status ("Green Card") Acquisition

Marywood University will typically sponsor foreign nationals who are full-time, regular employees in tenure and tenure-track academic job classifications provided the Provost agrees to support the application. These positions include professor, associate professor, and assistant professor. A department may request an exception if unique circumstances justify the sponsorship of a particular employee as outlined below.

Marywood University normally does not sponsor foreign employees in the following position classifications:

- Non-tenure track academic positions such as lecturers or research professors;
- Post-doctoral fellow/researcher positions; and
- Non-academic staff positions

A department may request an exception if unique circumstances justify the sponsorship of a particular employee as outlined below:

Tenured and Tenure Track Faculty

Before Marywood University will sponsor a tenured or tenured track foreign national faculty member, the faculty member must have the support of his or her Department Chair. The Department Chair must provide written notice to the Dean, Provost, and Executive Director of Human Resources that he/she supports the application. If approved by the Provost, the Human Resources Department will then contact the foreign national faculty member directly with more detailed information concerning the sponsorship process.

Non-Tenure Track Academic Positions, Post-Doctoral Fellow / Research Positions and Administrative Staff

Marywood assumes no obligation to sponsor a foreign national employee for permanent resident status. Marywood will decide on a case-by-case basis to sponsor a foreign national employee for permanent resident status.

As previously noted, Marywood University does not normally sponsor foreign nationals who do not hold a tenured or tenured track position. A department may request an exception to this policy if it can demonstrate that it is otherwise unable to recruit qualified applicants for the position.

Any department that believes an exception is appropriate for a particular employee must forward a written request for an exception with an attached job description and basis for seeking the exception to the Executive Director of Human Resources, who, in coordination with the Provost or appropriate Vice President will determine whether the University will grant the exception. The Executive Director of Human Resources and the Provost or Vice President will ascertain whether the University can sponsor a particular foreign national for lawful permanent residency based on its determination that the hiring department may be unable to recruit qualified applicants already eligible to work lawfully in this region.

The University must follow its regular recruitment process with respect to the hiring of an applicant for the position.

A foreign staff member, post-doctoral fellow/researcher, or lecturer who is not eligible for sponsorship by the University remains eligible to explore with an immigration attorney the possibility of self-sponsorship for permanent residence under the "national interest waiver" or "alien of extraordinary ability" provisions available under U.S. immigration law. More information on these options is available on the USCIS website: www.uscis.gov.

If Marywood agrees to sponsor a foreign national for permanent residency, the University will pay all fees associated with the Department of Labor's PERM process and the corresponding test of the labor market pursuant to 20 CFR §656.12 when required to obtain permanent resident status for a foreign national. With respect to processing an I-140 petition and subsequent I-485 application, a foreign national will be responsible for payment of those fees. While the foreign national is permitted to retain their own counsel to process the I-485 application, they must utilize Marywood's counsel for filing the I-140 petition.

In some instances, the use of the USCIS's premium processing service can be beneficial at the I-140 stage. If the use of premium processing is for Marywood's benefit, Marywood will cover and pay the fee (currently $2,500) as mandated by USCIS regulation and guidance. If the use of the premium processing service is, however, for the benefit of the foreign national, then the foreign national must pay this fee.

Marywood will not cover the expenses associated with the preparation and submission of any applications for derivative family members to obtain lawful permanent resident status.

If a foreign national employee wants to pursue permanent residence ("green card") without filing a PERM application (e.g. Outstanding Researcher/Professor), Marywood will determine on a case-by-case basis if Marywood will cover any of the fees and expenses associated with those filings.

Definitions:

The **H-1B** nonimmigrant classification is available to any person in a "specialty occupation," that is, a position which "requires the theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree (or its equivalent) as a minimum for entry into the occupation in the United States." The H-1B employee must meet the minimum qualifications for the position, including experience, degree, any license or certificate, and any special requirements at the time of filing the H-1B petitions.

Marywood sponsors certain faculty, researchers and specialized staff for H-1B nonimmigrant visa status. The following criteria must be met for an individual to be sponsored:

- The position must require at least a Bachelor's degree in a specific field and the foreign national must possess that degree or the equivalent to that degree at the time of the application. Positions that require a degree in any field or no degree do not qualify for H-1B visa status
- The benefits offered to employees in H-1B status must be the same as those offered to other employees in similar positions.
- The position must be full- time. An exception would be part-time positions that are paid hourly if the employee works at least 20 hours per week. Salaried part-time positions (including adjunct faculty) do not qualify for H-1B sponsorship due to the requirements to keep track of the actual number of hours worked each week.

The first step in obtaining an H-1B visa petition is to file a Labor Condition Application (LCA) with the Department of Labor (DOL). The LCA attests to the fact that employment of the H-1B worker will not

adversely affect the wages and working conditions of similarly employed U.S. workers and that the employer will be offering the prevailing wage for the area of employment or the actual wage, whichever is higher. In order to sign the LCA, the employer must have a wage survey on file to document that they are offering the prevailing wage. With respect to the actual wage, the employer must have in the file a full, clear explanation of the system used to set the actual wage, including which other employees were determined to have substantially comparable jobs and similar experience and qualifications. The documentation could be a memorandum to the file and/or payroll records. With respect to the prevailing wage, the documentation may be an industry survey, assuming it was published within the last two years, is the latest published prevailing wage finding for the area of intended employment, reflects the average wage paid to workers similarly employed and is a recognized source in the industry. The Department of Labor publishes a wage survey that is usually used for this purpose. Alternatively, an employer can request a State Employment Service (SESA) determination.

The **TN** nonimmigrant classification was developed as part of the North American Free Trade Agreement (NAFTA) to facilitate the entry of Canadian and Mexican citizens to the United States in order to engage in professional activities on a temporary basis. https://www.uscis.gov/working-in-the-united-states/temporary-workers/tn-nafta-professional

The **O-1** nonimmigrant classification is for the employment of individuals who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business, or athletics. https://www.uscis.gov/policy-manual/volume-2-part-m-chapter-4

Lawful permanent residents, or "green card" holders, are non-citizens who are lawfully authorized to live permanently in the United States. https://www.dhs.gov/immigration-statistics/lawful-permanent-residents

Procedures:

Departments requesting immigration sponsorship must contact Human Resources for further information. Marywood will not permit individual departments and/or foreign nationals to file their own temporary worker petitions (H-1B, O-1, TN, etc.).

When appropriate for Marywood to function as the sponsor/petitioner, the Human Resources Department is responsible for processing applications for lawful permanent residence based on employment.

Related Policies:

None Listed

Related Committees:

None listed

Policy History:

12/10/21 – The establishment of this new University Policy was approved by the President of the University as recommended by the Policy Committee of the University at their 12/10/21 meeting.

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